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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/854,334	05/11/2001	Dan Kikinis	112347.00120	7799
52940 7590 06/01/2007 HOLLAND & KNIGHT LLP 131 S. DEARBORN STREET 30TH FLOOR CHICAGO, IL 60603			EXAMINER NGUYEN BA, HOANG VU A	
			ART UNIT 2623	PAPER NUMBER
			MAIL DATE 06/01/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/854,334	Applicant(s) KIKINIS ET AL.	
	Examiner Hoang-Vu A. Nguyen-Ba	Art Unit 2623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 January 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>See Continuation Sheet</u> | 6) <input type="checkbox"/> Other: _____ |

Continuation of Attachment(s) 3). Information Disclosure Statement(s) (PTO/SB/08), Paper No(s)/Mail Date :6/15/05, 1/31/02, 8/28/01, 7/19/01, 6/4/01, 5/11/01.

DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 28, 2007 has been entered.
2. Claims 1-34 have been examined. Claims 1, 12 and 23 are independent claims.

Drawings

3. The formal drawings filed January 27, 2006 are objected because:
 - a. FIG. 3A shows item 330; however, this item is not described in the specification;
 - b. FIG. 3A does not show item 360 described in the specification at [0035].

Specification

4. The specification is objected to because the title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed (e.g., 3D-EPG).

Claim Objection

5. Claims 23 and 28 are objected to because of the following minor informalities:
Claim 23: the limitation "the machine" at line 2 appears to lack proper antecedent basis;
Claim 28: the limitation "the system" at line 2 appears to lack proper antecedent basis.

Claim Rejections – 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejection under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for the purposes of this subsection of an application filed in the United States and was published under Article 21(2) of such treaty in the English language

7. Claims 1-6, 8-9, 12-17 and 23-27 are rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,662,177 to Martino et al. (“Martino”).

Claim 1

Martino discloses *a system, comprising:*

a unit to generate an interactive 3-D electronic programming guide (EPG) selecting at least one of a plurality of objects stored at a user's location (see at least FIGs. 4-17 and 7:17-18); and

a communication module coupled to a network (see at least FIG. 1, device 240 with built-in communications software and hardware to communicate with devices 245, 235, 260 and 270) to receive localized content, the localized content targeted to a particular locality (it is noted that the feature “to receive localized content, the localized content targeted to a particular locality” is deemed inherent to Martino because a user in San Francisco, CA may not receive the same television programs as one in Alexandria,

VA notwithstanding they are affiliated to the same television network, e.g., CBS in FIG. 8).

Claim 12

Claim 12 is a method claim that corresponds to Claim 1. Therefore, Claim 12 is rejected as discussed in Claim 1.

Claim 23

Claim 12 is an apparatus claim (i.e., *a machine-readable storage medium tangibly embodying a sequence of instructions executable by the machine*) that corresponds to Claim 1. Therefore, Claim 23 is rejected as discussed in Claim 1.

Claims 2, 14 and 24

Rejections of base claims 1, 12 and 23, respectively are incorporated. Martino further discloses *wherein the system comprises a set-top box, a television, or a VCR* (see at least FIG. 1, devices 230, 240; 9:14-15).

Claims 3 and 25

Rejections of base claims 1 and 23, respectively are incorporated. Martino further discloses *wherein the system includes a plurality of drivers, one of the drivers communicating with a separate unit to replenish programming information* (see at least 6:50 – 7:54).

Claims 4, 13, 15 and 26

Rejections of base claims 1, 12 and 23, respectively are incorporated. Martino further discloses *wherein a memory in the system contains said at least one of plurality of objects*

associated with current programming events, a first class of objects providing plurality of virtual worlds included in the 3-D EPG (see at least 2:21-29).

Claims 5, 16 and 27

Rejections of base claims 1, 12 & 23 and intervening claims 4; 13, 14 & 24, 26, respectively are incorporated. Martino further discloses *wherein the memory in the system includes a second set of objects that includes at least one of a schedule times, channel identification, or title, corresponding to a program* (see at least FIGs. 4-17, wherein in FIG. 4, e.g., Day, Time, Channel, Keyword).

Claims 6 and 17

Rejections of base claims 1 & 12 and intervening claims 4, 5 & 13, 15, 16 respectively are incorporated. Martino does not specifically disclose *wherein the second set of objects includes localized content*. However, the claimed second set of objects that include localized events is deemed inherent to Martino because a user in San Francisco, CA may not receive the same television programs as one in Alexandria, VA notwithstanding they are affiliated to the same television network, e.g., CBS in FIG. 8).

Claim 8

The rejection of base claim 1 is incorporated. Martino further discloses *wherein the 3D EPG includes a presentation of a virtual world related to content selected by a user* (see at least 2:21 – 4:45).

Claim 9

Rejections of base claim 1 and intervening claim 8 are incorporated. Martino further discloses *wherein a subset of the virtual world is displayed as a matrix of rectangular boxes containing current program information* (see at least FIG. 10).

Claim Rejections – 35 USC § 103

8. The following is a quotation of the 35 U.S.C. § 103(a) which form the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 7, 10-11, 18-22 and 28-34 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Martino, as applied to the corresponding base and intervening claims, in view of U.S. Patent No. 6,754,906 to Finseth et al. ("Finseth").

Claim 7

The rejections of base claim 1 and intervening claim 4 are incorporated. Martino does not specifically disclose *wherein the memory in the system includes a third set of non-EPG objects including objects used for e-commerce*. However, in an analogous art, Finseth teaches displaying a Main Menu, which provides a user interface for purchasing items through an electronic catalog (see at least FIG. 9). It would have been obvious to a person having ordinary skill in the art at the time the invention was made to combine Finseth with Martino. One of ordinary skill in the art would have been motivated to implement such a combination for the sake of providing user with e-commerce capabilities to Martino.

Claim 10

The rejections of base claim 1 and intervening claims 4 & 7 are incorporated. Martino does not specifically disclose *wherein content of the third set of non-EPG objects is uploaded in real time*. However, this feature is deemed inherent to Finseth because the electronic catalog (see at least 20:27-29) disclosed in Finseth should be updated in real-time to reflect the inventory of items in stock so that when a user places an order, the item(s) is/are available or shown to be available in the near future. Without the real-time operating capability, e-commerce would be inefficient and the sales company would lose credibility and business very quickly.

Claim 11

The rejections of base claim 1 and intervening claims 4, 7 & 10 are incorporated. Martino further discloses *a user interface for a user to interact with the localized interactive content of the 3D EPG* (see at least 2:21 – 3:15).

Claims 18 and 28

Pursuant to Claim 18, rejections of base claim 12 and intervening claims 13, 15-17 are incorporated.

Pursuant to Claim 28, rejections of base claim 23 and intervening claims 24, 26-27 are incorporated.

Martino does not specifically disclose *wherein the plurality of objects includes a third set of non-EPG objects including objects used for e-commerce*. However, in an analogous art, Finseth teaches displaying a Main Menu, which provides a user interface for purchasing items through an electronic catalog (see at least FIG. 9). It would have been obvious to a person having ordinary skill in the art at the time the invention was

made to combine Finseth with Martino. One of ordinary skill in the art would have been motivated to implement such a combination for the sake of providing user with e-commerce capabilities to Martino.

Claims 19 and 29

Rejections of base claims 12 & 23 and intervening claims 13-18 & 24-28 are respectively incorporated. Martino further discloses *wherein the 3D EPG includes a presentation of a virtual world related to content selected by a user* (see at least 2:21 – 4:45).

Claims 20 and 30

Pursuant to Claim 20, rejections of base claim 12 and intervening claims 13, 15-19 are incorporated.

Pursuant to Claim 30, rejections of base claim 23 and intervening claims 24, 26-29 are incorporated.

Martino further discloses *wherein a subset of the virtual world is displayed as a matrix of rectangular boxes containing current program information* (see at least FIG. 10).

Claims 21 and 33

Pursuant to Claim 21, rejections of base claim 12 and intervening claims 13, 15-20 are incorporated.

Pursuant to Claim 33, rejections of base claim 23 and intervening claims 24, 26-28 & 33 are incorporated.

Martino does not specifically disclose *uploading content of the third set of non-EPG objects in real time*. However, this feature is deemed inherent to Finseth because the electronic catalog (see at least 20:27-29) disclosed in Finseth should be updated in real-time to reflect the inventory of items in stock so that when a user places an

order, the item(s) is/are available or shown to be available in the near future. Without the real-time operating capability, e-commerce would be inefficient and the sales company would lose credibility and business very quickly.

Claims 22 and 34

Pursuant to Claim 22, rejections of base claim 12 and intervening claims 13, 15-21 are incorporated.

Pursuant to Claim 34, rejections of base claim 23 and intervening claims 24, 26-28 & 32-33 are incorporated.

Martino further discloses *providing a user interface coupled to the EPG for a user to interact with the localized interactive content* (see at least 2:21 – 3:15).

Claim 31

Rejections of base claim 23 and intervening claims 24, 26-30 are incorporated. Martino further discloses *wherein a user of the system chooses a virtual world to display programming information* (see at least 2:21 – 3:15).

Claim 32

Rejections of base claim 23 and intervening claims 24, 26-28 are incorporated. Martino does not specifically disclose *wherein the second set of objects includes localized content*. However, the claimed second set of objects that include localized events is deemed inherent to Martino because a user in San Francisco, CA may not receive the same television programs as one in Alexandria, VA notwithstanding they are affiliated to the same television network, e.g., CBS in FIG. 8).

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hoang-Vu "Antony" Nguyen-Ba whose telephone number is (571) 272-3701. The examiner can normally be reached on Tuesday-Friday from 7:00 am to 5:30 pm.

If attempts to reach the examiner are unsuccessful, the examiner's supervisor, John Miller can be reached at (571) 272-7353.

The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Any inquiry of a general nature or relating to the status of this application should be directed to the TC 2600 Group receptionist (571) 272-2600.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at (866) 217-9197 (toll-free).



May 24, 2007

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